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In the

Supreme Court of the United States

October Term, 1950.

No. 532.

JOHN S. OTTLEY, *Petitioner*,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, *Respondent*.

MOTION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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To the Honorable, the Justices of the Supreme Court of the United States:

Since two of the Honorable Justices of this Court were inclined to the view that our petition for writ of certiorari should be allowed, we feel justified in asking this Honorable Court to reconsider this matter.

May we respectfully bring this additional thought to attention? The orders to "cut through" the standing cars which petitioner received from his foreman were orally given, and were ambiguous, containing no specific direction as to how petitioner was to "cut through." It is the universal rule that the construction of an oral contract, or of an ambiguous written contract, is for the jury,

and so the Supreme Court of the State of Missouri violated this cardinal rule in holding that the oral orders given your petitioner did not embrace a direction to proceed as he did. Petitioner had a right to construe his orders as he did, since his own foreman cut through the trains exactly in the same fashion as did petitioner, and so, under every ruling of this Court, a jury issue was present.

In his concurring opinion in the *Tiller* case, Mr. Justice Frankfurter said: "Perhaps no field of law comes closer to the lives of so many families in this country than does the law of negligence, imbedded as it is in the Federal Employers' Liability Act. It is most desirable, therefore, that the law should not be cloudy and confused."

We most respectfully submit that the denial of our petition for writ of certiorari in this case, if permitted to stand, leaves the law in a cloudy and confused state, since the opinion of the Supreme Court of Missouri, which we attack, is derogatory of the holding of this Court in *Lavender,* in *Tiller,* in *Tennant,* and in *Bailey,* that negligence in these cases is for the jury and not for the court.

Wherefore, we most respectfully pray that this motion for rehearing be entertained and that this matter be given further consideration.

Respectfully submitted,

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